

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 338 of 1980

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G E B

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:

MR MD PANDYA for Petitioner

MR PJ VYAS for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 5th April, 1980 passed by the learned Joint District Judge, Ahmedabad [Rural] in Regular Civil Appeal No. 21 of 1979 arising of the judgment and order dated

30th December, 1978 passed by the learned Civil Judge (JD), Dehgam in Regular Civil Suit No. 199 of 1976. The appellant before this Court is the plaintiff.

2. The plaintiff is the Gujarat Electricity Board, a statutory Board established under the Electricity Supply Act, 1948 [hereinafter referred to as, 'the Board']. In or around the years 1960-61, the Board, under the powers conferred upon it under the Indian Electricity Act, 1910, had laid 60 KVA and 22 KVA lines. The said lines passed above the lands bearing Survey No. 454/1-2-3 and Survey No. 455, situated at Rakhial area of District-Ahmedabad [Rural]. The said lands, bearing Survey No. 454/1-2-3 and Survey No. 455, were acquired in or around the year 1962 for the purpose of the Agricultural Produce Market Committee, Dehgam, the defendant, for a sub-market yard. The said Market Committee divided the said lands in several sub-plots and gave the said sub-plots to the traders for constructing their godowns. While constructing the said godowns, the Horizontal Clearance and the Vertical Clearance required to be maintained under the Indian Electricity Rules, 1956 was not maintained and the construction was thus made in violation of the said Rules. The Board, therefore, instituted the above referred Regular Civil Suit No. 199 of 1976 and prayed that the defendant-Market Committee be restrained from making any construction in violation of the Horizontal and Vertical Clearance, as required under the Electricity Rules and any construction made in violation of the Horizontal & Vertical Clearance be removed. The suit was contested by the defendant-Market Committee by filing its written statement at Exh. 16. It was contended that the suit instituted without notice, as envisaged under Section 58 of the Gujarat Agriculture Produce Markets Act, 1963, was not maintainable and even otherwise, in view of Section 15 of the Indian Telegraph Act, 1885, the Civil Court had no jurisdiction to entertain such a suit.

Mr. Pandya has submitted that Section 58 of the Gujarat Agriculture Produce Markets Act, 1963 provides for a notice in writing two months before the institution of the suit or other proceedings against the Market Committee for anything done or purported to be done in good faith under the said Act. He has submitted that the object of the said Act is to regulate buying and selling of agricultural produce and the establishment of the markets for agricultural produce. The construction of the godowns of the traders dealing in agricultural produce cannot be said to be an act under the said Act. No notice, therefore, was required to be given prior to

the institution of the suit requiring demolition of illegal construction made in contravention of the Electricity Rules. He has further submitted that both the Courts below have erred in relying upon the Indian Telegraph Act, 1885 and particularly Section 15 thereof. Section 15 of the said Act refers to a dispute arising between the Telegraph Authority and a Local Authority. The Board is not a Telegraph Authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885. In support of this argument, Mr. Pandya has relied upon the judgment of the Hon'ble Supreme Court in the matter of The Patna Electric Supply Company Limited v. The Patna Municipal Corporation & Ors., [AIR 1970 SC 491]. He has submitted that Section 51 of the Indian Electricity Act, 1910 does empower the State Government, by an order in writing, to confer upon the Board, subject to such conditions and restrictions [if any] as the State Government may think fit to impose and to the provisions of the Indian Electricity Act, 1885, any of the powers which the Telegraph Authority possess under the said Act with respect to placing of the Telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be established or maintained. However, by conferment of such power, the Board does not become a Telegraph authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885.

In the matter of Patna Electric Supply Company Limited [Supra], the Hon'ble Supreme Court has held that, 'merely because some of the powers conferred under the Indian Telegraph Act on the Telegraph authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act.' It further held that, 'a licensee under the Indian Electricity Act cannot be considered as a Telegraph authority, an expression defined in Section 3 (6) of the Telegraph Act. Further, that the disputes that can be referred to arbitration under the provision are only those referred to in that section and no other.'

I am of the view that both the Courts below have grossly erred in invoking the provisions contained in Section 15 of the Indian Telegraph Act, 1885. The said section deals with the disputes between the Telegraph authority and a Local Authority. It cannot be gainsaid that the defendant-Market Committee is a Local Authority. However, by no stretch of imagination, the Board can be said to be a Telegraph Authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885. As held by the

Hon'ble Supreme Court in the matter of Patna Electric Supply Company Limited [Supra] merely because some powers conferred upon the Telegraph Authority can be conferred upon the licensee under the Indian Electricity Act, 1910, such a licensee does not become a Telegraph Authority. Both the Courts below, therefore, were not right in holding that the remedy lay before the officer appointed by the Central Government in that behalf under Section 15 of the Indian Telegraph Act, 1885. I am of the view that the remedy would lie under the General Civil Law and the suit in the subject matter before the Civil Court was maintainable.

Section 58 of the Agriculture Produce Market Act, 1963 requires that no suit or other proceedings shall be instituted against a Market Committee until the expiration of two months next after the date of notice in writing containing the details referred to in sub-section (1) of Section 58 of the said Act. The said sub-section refers to a suit or other proceedings against a Market Committee or a Member, Officer or servant thereof or a person acting under the instructions of any of them for anything done or purporting to be done in good faith under the said Act. The question, therefore, would be whether construction of godowns by the members of the Market Committee can be said to be an act done under the said Act. The object of the said Act is to regulate buying and selling of agriculture produce and the establishment of the markets for agricultural produce. The construction of godowns by the members of the Market Committee may be an act in furtherance of the objects of the Act i.e., construction of such godowns may facilitate buying and selling of agricultural produce. However, the same cannot be said to be the purpose of the Act. The purpose of the Act is not to construct godowns for the dealers in the agricultural produce nor the establishment of market can be equated with that of construction of godowns by the members of the Committee. To me, it appears that while making sub-plots out of a large piece of land and in allotting such plots to the members of the Committee for construction of the godowns, the defendant-Market Committee cannot be said to be acting under the said Act. For a suit praying for demolition of such godowns in so far as they are constructed in violation of the Indian Electricity Rules, 1956, no notice as envisaged under Section 58 of the said Act would be required to be given. The suit, therefore, could not have been dismissed for want of notice as envisaged under Section 58 of the said Act. The suit in the present nature was, therefore, competent.

The trial Court under its judgment and order dated 30th December, 1978 has recorded a finding that the defendant-Market Committee had made construction on lands Survey No. 454/1-2-3 and Survey no. 455 without obtaining vertical and horizontal clearance. The said finding has not been challenged by the defendant-Market Committee and has thus achieved finality. As I have held that the suit before the Civil Court was competent and since the construction is in violation of the Indian Electricity Rules, 1956 has been proved, the plaintiff must succeed.

In view of the above discussion, the appeal is allowed. The Regular Civil Suit No. 199/76 filed before the learned Civil Judge (JD), Dehgam is decreed. The defendant-Market Committee is directed to remove the construction from the lands - Survey No. 454/1-2-3 and Survey No. 455 situated at Rakhial which is in violation of the Rules 77 to 82 of the Indian Electricity Rules, 1956. The defendant-Market Committee is also permanently enjoined from putting any construction on the lands Survey no. 454/1-2-3 and Survey No. 455 situated at Rakhial in contravention of the horizontal and vertical clearance under the Indian Electricity Rules, 1956. The defendant-respondent shall bear the costs of the plaintiff throughout.

Prakash*